

# THE FRESH START

A Periodic Newsletter from the United States Trustee Offices for Region 11 - Wisconsin and the Northern District of Illinois

SPRING 2002

## TABLE OF CONTENTS

<i>From The Desk Of The U.S. Trustee. . . . .</i>	<i>1</i>
<i>National News . . . . .</i>	<i>2</i>
<i>News from Region 11 . . . . .</i>	<i>2</i>
<i>Recent Region 11 Prosecutions . . . . .</i>	<i>5</i>
<i>Recent Court Decisions . . . . .</i>	<i>7</i>
<i>Notable Cases Recently Filed. . . . .</i>	<i>9</i>
<i>Civil Enforcement Actions. . . . .</i>	<i>9</i>

### From the Desk of the U.S. Trustee

*Beginning in October of this past year the United States Trustee Program launched a nationwide Civil Enforcement Initiative. The Civil Enforcement Initiative is a commitment to increase efforts of all U.S. Trustee Offices by focusing our energies and resources on the eradication of bankruptcy fraud from the system. The initiative also seeks to reduce the mystery of the bankruptcy process so that even the casual observer will have confidence in the system.*

*The Civil Enforcement Initiative has been implemented in Region 11 through increased scrutiny of no asset cases, the debtors who file those cases, and the underperforming professionals who service those cases. All U.S. Trustee personnel in Region 11 have attended special training programs at our national training facility in Columbia, S.C. in order to better achieve the goals of the initiative.*

*The goals of the Civil Enforcement Initiative are directly related to improving the integrity of the bankruptcy system, which is impugned by the small percentage of the debtors and others who attempt to abuse it.*

*The goals of the initiative include:*

*i Ensuring that Chapter 7 is not abused and Chapter 7 debtors are held accountable. Noncompliance with the law will lead to the conversion or dismissal of cases or denial or revocation of discharges. One of the biggest problems in this area is incomplete and inaccurate debtor schedules. All our offices have increased their scrutiny of the petitions and §§707(b) and 727 motions are being successfully brought throughout Region 11.*

*ii Protecting consumer debtors, creditors and others from those who would mislead and misinform them. Section 110 actions are being brought against petition preparers who go beyond the restrictions of §110, and underperforming attorneys are the subject of motions for fee disgorgements and sanctions. We must raise the level of competency of those underperforming attorneys who do not fully represent their clients.*

*iii Ensuring that Chapter 11 debtors proceed promptly through the system and that the debtors are fully informed of and held accountable for their obligations under Chapter 11. In particular, Chapter 11 cases are not being allowed to languish in the bankruptcy courts. All our offices are being aggressive in monitoring these cases and ensuring that they are capable of and moving towards plan confirmation. Those that are not are being addressed through motions to dismiss or convert under §1112 or motions to appoint a trustee under §1104.*

*iv Continuing our use of the criminal referral process to combat fraud and abuse in the system. All our offices have well established relationships with our local U.S. Attorney offices. As evidenced by the prosecutions noted in this newsletter we are continuing to pursue all appropriate instances of fraud and abuse through the criminal referral process.*

*The Civil Enforcement Initiative was begun as a national program in pursuit of common goals. We hope to make a significant*

*contribution to the bankruptcy system. We will be aggressive in achieving our goals. There is a Chinese proverb that states "It is not the knowing that is difficult, but the doing." We know that there are problems in the bankruptcy system. Through the Civil Enforcement Initiative we are increasing our efforts to do something to eliminate those problems.*

### **National News**

On March 4, 2002, Lawrence A. Friedman became the new Director of the Executive Office for U.S. Trustees (EOUST). EOUST supervises 21 regional and 95 field offices covering 88 federal judicial districts. Mr. Friedman founded the law firm of Friedman & Kohut P.C., which specializes in consumer bankruptcy, commercial bankruptcy, commercial litigation, insolvency, and real estate law. Mr. Friedman, as trustee in the Eastern District of Michigan, administered over 10,000 Chapter 7 cases, and is the immediate past president of the National Association of Bankruptcy Trustees. Martha Davis, who had been the Acting Director since Kevyn Orr's resignation in January 2001, was named Deputy Director on April 1, 2002.

In late 2001, Ira Bodenstein began serving as United States Trustee (UST) for Region 9, in addition to Region 11. Region 9 covers the states of Michigan and Ohio, with offices in Grand Rapids, Detroit, Cleveland, Columbus, and Cincinnati.

### **News from Region 11**

On August 31, 2001, the Chicago United States Trustee's Office (USTO) said goodbye to paralegal Fred Day, who left to teach English at a technical college in Bangkok, Thailand. We hope Fred enjoys the warmer weather there.

On September 10, 2001, Ira Bodenstein and Sandra Rasnak, Assistant United States Trustee (AUST), made presentations at the National Association of Credit Managers in Streamwood, Illinois.

In October 2001, trial attorney and supreme athlete Steve Wolfe ran the Chicago Marathon for the fifth time.

The Madison office held its annual training for its Chapter 7 trustee panel in November 2001. Ira Bodenstein attended the meeting.

UST Ira Bodenstein spoke to the Chicago Bar Association's Bankruptcy Committee on his annual USTO update in November 2001.

Region 11 congratulates computer specialist Keith Manikowski and his wife on the November 26, 2001 birth of their baby boy. Keith is doing everything possible to ensure that Ryan grows up to be a Chicago Bears football fan, rather than a Green Bay Packers fan. As if the new baby wasn't enough, a chocolate Labrador puppy recently joined the family!

Richard Friedman, trial attorney, revised and updated the chapter on the U.S. Bankruptcy Court for the Northern District of Illinois for the 2001 edition of the *Chicago Lawyer's Court Handbook*, published by the Young Lawyers Section of the Chicago Bar Association. Ira Bodenstein is on the Board of Editors.

Richard Friedman spoke on a Continuing Legal Education panel on Bankruptcy Fundamentals presented by the Chicago Bar Association and on "Adequate Protection" before the Chicago Bar Association's Bankruptcy Committee.

Sheree Dandurand, Madison's AUST, attended Emerging Trends in Chapter 11 training in January at the National Advocacy Center (NAC), in Columbia, South Carolina.

In conjunction with the recent Chapter 7 initiative, Region 11 sent Bob Wakefield and paralegals Christine Kriegl, Michelle Engel, Maureen Gaber, and Sylvia Brown, analysts Tom Thornton, Alfreda Baran, and Suzanne Budnar, and trial attorney Tom Walz to the NAC for civil enforcement training. AUST Sandra Rasnak was an instructor at the February 20-22, 2002 session.

Amy Pemberton, Madison legal clerk, and Julia Russell, secretary to the UST, attended training for Support Staff in February at the NAC.

AUST Sandra Rasnak participated in a Bankruptcy Fraud Training Seminar in Hato Rey, Puerto Rico in January.

During the Spring 2002 semester, the Chicago office has benefitted from the expertise and hard work of three DePaul Law School externs - Brian Tokiyama, Janice Alwin and Patrick Clisham.

On January 28, 2002, Region 11 welcomed two new employees. Brenda Miner joined the Madison office as legal clerk. Brenda previously worked at the Veterans Administration in Milwaukee. Jennifer Conrad joined the Chicago office as a paralegal

specialist. Jennifer formerly worked for a Chapter 7 trustee in the Northern District of Indiana.

The Madison office welcomed a new trustee, Megan Heeg. Ms. Heeg will administer cases in the Sterling/Dixon, Illinois area and began receiving cases in February.

Electronic case filing has arrived in the Western District of Wisconsin. All cases filed in the Western District are being assigned to the Electronic Case Filing System. As of February 4, 2002, the USTO and all standing and panel trustees in the Western District of Wisconsin are required to file all pleadings and documents electronically with the Bankruptcy Clerks Office. Prior to implementation, training was provided by the Clerk's Office for all trustees and the Madison USTO. There have been some rough moments, but so far everyone has survived. The system will expand to include voluntary participation by attorneys in April.

On March 7, 2002, the Annual Trustee Seminar for Chapter 7 trustees was held at the Eastbank Club in Chicago. Speakers included the Honorable Margaret Dee McGarity (Bankruptcy Judge, Eastern District of Wisconsin) in a panel discussion about divorce issues in bankruptcy. Other presentations included an address by the Honorable Susan Pierson Sonderby, Chief Judge, *United States Bankruptcy Court, Northern District of Illinois*, and panel discussions on substantial abuse under §707(b), Chapter 7 exemptions, and §506(c) issues after *Hartford Underwriters Insurance v. Union Planters Bank*, 530 U.S. 1 (2000).

On March 11, the Milwaukee office welcomed two new employees - paralegal Linda Saladin and legal clerk Carrie Baumgardt

On March 20, 2002, Region 11 paralegals and analysts met in Milwaukee to discuss Form 4, universal transaction codes (UTC) and UTC training for trustees.

Bob Wakefield of the Chicago USTO was recently promoted to bankruptcy analyst.

On April 11, 2002, Ira Bodenstein spoke at the Advanced Bankruptcy Seminar sponsored by the Chicago Bar Association on the topic of new trends in Chapter 11.

During the week of April 15-19, 2002, bankruptcy analysts Bob Wakefield and Tom Thornton and senior bankruptcy analyst Howard Wilkes attended Chapter 13 training at the NAC.

On April 17, 2002, for the third consecutive year, a delegation from the Peoples Republic of China visited the Chicago USTO. The delegation, made up of government officials, judges and lawyers, was led by Wang Zhen Hua, Deputy Director of Finance & Economics Committee, The Standing Committee of Beijing Municipality Peoples Congress. The visit was part of a tour, arranged by the Chicago law firm Kirkland & Ellis, that included stops at the Bankruptcy Court and the Mayor's Office. The purpose of the visit was to learn about the U.S. Bankruptcy System. The delegation met with Ira Bodenstein who explained how Chapter 7 and 11 trustees were appointed in corporate bankruptcy cases.

In conjunction with the civil enforcement program, each Region 11 Chapter 13 trustee will now be assigned a USTO trial attorney to provide guidance and coordination.

### **Recent Region 11 Prosecutions**

On December 18, 2001, defendant Dale A. Bara pled guilty to one count of bankruptcy fraud (18 U.S.C. § 152(3)) of a three count indictment. Bara was sentenced to five months imprisonment to be followed with supervised release of 3 years, and a \$100 assessment. Bara was indicted in April 2001 for concealing assets in connection with a bankruptcy petition he filed with his wife in 1997.

On January 18, 2002, Deborah Holland was sentenced to fifteen months imprisonment on each of two counts to run concurrently, followed by three years of supervised release, a \$200 assessment, and restitution totaling \$386,731. Holland pled guilty to one count of 18 U.S.C. § 1344, and one count of 18 U.S.C. § 15. Holland was charged in April 2001 in a nineteen count indictment involving a scheme to defraud banks, mortgage lenders, creditors, and the bankruptcy trustee by submitting false information in an attempt to fraudulently obtaining mortgages and credit from financial institutions. Part of this scheme involved filing four fraudulent bankruptcies.

On February 7, 2002, Donald W. Lee, a suspended attorney, was charged with one count of bankruptcy fraud in a scheme involving a forged bankruptcy court document. According to the indictment, Lee was removed from the Illinois master roll of licensed attorneys on February 1, 1997. Lee fraudulently represented himself as a licensed attorney in July 1997,

indicating he could assist the client and her husband in filing for bankruptcy protection. Lee allegedly accepted three payments of \$1,010 for legal services. The Illinois Supreme Court formally suspended Lee from practicing law for three years on February 1, 1999. Lee falsely represented in November 1999 that he filed a bankruptcy petition, when he did not, and would accompany the

clients to the first meeting of creditors. Lee allegedly prepared a counterfeit document to notify his clients that a hearing to confirm their discharge would be held March 10, 2000, telling them the hearing was postponed until April 5, 2000. At the April 5, 2000 meeting, Lee allegedly gave his client \$500 and four \$700 checks, urging her not to disclose what had happened in the bankruptcy to anyone or to get him in trouble. He falsely represented to her in a written document that such payments were legal.

On November 15, 2001, six defendants were charged in these unrelated indictments:

Richard N. Golding, an experienced Chicago attorney with a substantial bankruptcy practice, operated Marketplace Auction and Appraisal, an auction service used by appointed Chapter 7 trustees to liquidate bankruptcy estate property. Golding was charged in an information with one count of criminal contempt for allegedly disobeying a court order directing him not to pay any compensation to his auction service without seeking court approval. In three cases, rather than promptly remitting the auction proceeds to the trustees as required, Golding deposited the funds into Marketplace's bank account and delayed paying the trustees the money due to the estates. During the periods of delay, Golding allegedly used the estate funds for business and personal expenses, violating a direct order of the Bankruptcy Court.

Andre Brown, a self-employed mortgage loan facilitator, was charged in a criminal information with one count of bankruptcy fraud. Brown allegedly used his position as a mortgage loan broker to obtain mortgages for properties he purchased for himself using his deceased uncle's name, *Clyde Merrill*. Brown failed to make mortgage payments on two properties and filed a Chapter 13 case using the *Clyde Merrill* name to halt foreclosure. Brown failed to disclose filing five prior bankruptcies as Andre Brown, failed to disclose using the name Andre Brown, and falsely claimed a monthly income of \$2,042 to pay creditors. When his bankruptcy was dismissed, Brown filed two more bankruptcies as *Clyde Merrill* to halt foreclosure sale of the two properties, concealing his true identity and prior bankruptcies and using a false social security number.

William H. Garrett, was charged in a four-count indictment with concealing property of a bankruptcy estate and making false statements on his financial statement and under oath in a meeting of creditors. According to the indictment, when filing his Chapter 7 bankruptcy, Garrett was the plaintiff in a personal injury lawsuit. Garrett allegedly concealed the lawsuit until his discharge, although required to list that it as an asset. On his financial statement, Garrett falsely answered questions about lawsuits in which he was a party, payments of more than \$600 to any creditor in the prior 90 days, and property transferred in the prior year. At the first meeting of creditors, Garrett allegedly denied involvement in any lawsuit, stating that he had accurately listed his assets.

An independent hairdresser, Angela N. Nash, was charged in a five-count indictment with bankruptcy fraud, making false statements and bank fraud. According to the indictment, Nash, under the name *Nicole D. Nash* obtained a mortgage and refinanced her condominium, using a false social security number, identification, employment, and income information. She also purchased a Dodge Durango with the false name and credit information. After falling behind in payments, she filed a Chapter 13 using the name *Nicole D. Nash* and a false social security number. After the first bankruptcy was dismissed October 20, 1998, Nash filed a second bankruptcy on October 23, 1998 as *Nicole D. Nash* to avoid foreclosure of her condominium and automobile. After that bankruptcy was dismissed in March 1999, she filed a third bankruptcy in May 1999, again using the false information. On January 11, 1999, a forged cashier's check was deposited into Nash's bank account, and she allegedly wrote and cashed checks drawn on the fraudulently funded account.

Michael Weathersby, independently employed in plumbing and real estate, was charged in a three-count indictment with making false statements in his Chapter 7 bankruptcy and under oath. According to the indictment, Weathersby filed for bankruptcy on June 4, 1997, using the alias *Michael Neal* and a false social security number. Weathersby falsely declared he had no real property. In connection with the same bankruptcy, Weathersby filed a false financial statement declaring no income during the past two years, when he had received gross income of \$148,000 in 1997 and \$101,000 in 1996, from real estate sales. Weathersby falsely stated he had not transferred this same property during the prior two years. Under oath Weathersby falsely identified himself as *Michael Neal* and denied owning real estate.

Day care provider Ronda T. Payne was charged in a two-count indictment with a fraud scheme. Using false social security numbers, income and credit information supported by phony tax returns, Payne applied for consumer loans and automobile financing of \$50,000 and obtained personal property and automobiles. Payne filed two false bankruptcy petitions, using a false social security number and claiming no income. In the second bankruptcy, Payne allegedly concealed the prior bankruptcy, used a false social security number and provided false income information.

### Recent Court Decisions

*In re United States Leather Inc.*, 271 B.R. 306 (Bankr. E.D. Wis. 2001) A city's lien for pre-petition water and sewer charges was not perfected at the time the services were incurred, the U.S. Bankruptcy Court for the Eastern District of

Wisconsin held. Under Wisconsin law, the debtor's delinquent pre-petition water and sewer charges, which were not yet on the tax rolls as of the date of the Chapter 11 filing, constituted an interest in property that was subject to the debtor's §545(2) avoiding powers. No lien was in existence when the bankruptcy petition was filed. On February 22, 2000, United States Leather Inc. filed a Chapter 11 petition, operating the business and conducting its liquidation as debtor-in-possession. Before the petition date, the debtor incurred \$262,258 in charges from the City of Milwaukee for water and sewer use at its properties. The properties were either sold free and clear of liens or were in the process of being sold. On May 7, 2001, the debtor brought an adversary proceeding against the city, seeking a declaratory judgment that certain of the debtor's pre-petition water and sewer charges were unsecured claims under §545(2). The city argued, pursuant to Wisconsin law, that the pre-petition charges were a lien on the debtor's property at the time the services were incurred. The parties reached an agreement on the total amount of charges and stipulated that the issue of whether the pre-petition charges were unsecured or secured claims was solely an issue of law, subject to summary determination. Wis Stats. §66.069(1)(b) provides that notice of unpaid water charges will be sent to the owner, and unless paid by November 1 or by November 15 with a 10 percent penalty, the water charges "will be levied as a tax against the lot or parcel of real estate to which utility service was furnished. . . . Each such delinquent amount, including such penalty, shall *thereupon* become a lien." Judge McGarity said she was satisfied that under §66.069(1)(b), the pre-petition charges "could not become a lien until November 16 of the year they were incurred, and that date was after the filing of the petition." Thus, the charges were not a lien on the petition date, and any purported lien of the real estate sold by the debtor-in-possession could be avoided. Judge McGarity granted summary judgment for the debtor, interpreting the effect of two Wisconsin statutes so that they would not be "contradictory, redundant or absurd."

*Goulet v. Educational Credit Management*, 284 F.3d 773 (7th Cir. 2002). The Seventh Circuit Court of Appeals recently held that a debtor's age, alcohol and substance abuse, current unemployment and prior felony conviction did not create substantial barriers to meaningful employment and denied his request to discharge his student loans based on "undue hardship." In determining whether repayment of a student loan will create an "undue hardship" under §523(8) of the Bankruptcy Code, the Seventh Circuit has adopted the Second Circuit's three-prong *Brunner* test. Under this standard, the debtor must show: (a) that based on his current income and expenses, he cannot maintain a minimal standard of living for himself and his dependents if forced to repay the loans; (b) that additional circumstances exist which will prevent the debtor from improving his financial condition during the repayment period of the student loans; and (c) that the debtor has made a good faith effort to repay the student loans. The undisputed facts were as follows. In 1972, the debtor obtained a bachelor's degree in history with a 3.45 grade point average. For the next 11 years, he worked at various jobs, including bartending and restaurant management. In 1984, he became a life insurance agent and earned \$20,000-30,000 per year for several years. In 1988, he was convicted of possession of cocaine with intent to deliver, and subsequently lost his insurance license. From 1991 to 1995, the debtor went back to school and completed all required courses for a master's degree in psychology. He did not obtain his master's degree, however, because he did not complete his thesis after concluding that his felony conviction would prevent him from becoming a certified counselor. The debtor obtained 21 student loans totaling \$76,000 to attend graduate school. After graduate school, the debtor worked as a bartender and real estate agent. At the time of trial, he was 55 years old, unemployed, and living with his mother. His mother received Social Security benefits, and was helping him pay child support of \$228 per month for his 11 year old son. There was disputed testimony on whether the debtor continued to abuse alcohol. The bankruptcy court discharged the student loans, determining that forced repayment of the student loan would create an undue hardship for the debtor under the three-prong *Brunner* test. The district court reversed, and the Seventh Circuit affirmed the district court. The Seventh Circuit agreed that the debtor's current income would not permit him to repay the student loans and maintain a minimal standard of living. However, the Seventh Circuit disagreed that the debtor's age, felony conviction and alleged alcoholism would prevent him from obtaining employment. The debtor was healthy, intelligent and well-educated, and produced no evidence that his problems are insurmountable or that they impair his ability to work. He therefore failed to prove that his current economic condition was likely to persist for a significant portion of the student loan repayment period. The Seventh Circuit also questioned, but did not decide, whether the debtor had made a good faith effort to repay his loans, because he consistently sought deferrals and had not made any payments.

### **Notable Cases Recently Filed**

*Kmart Corporation* - On January 22, 2001, Kmart Corporation filed for Chapter 11 bankruptcy protection in the Northern District of Illinois. The 105-year old discount chain, second only to Wal-Mart in national sales, has over 2,100 stores with 250,000 employees. Kmart and 37 of its U.S. subsidiaries listed \$17 billion in assets and \$11.3 billion liabilities for the fiscal quarter ending October 31, 2001. On March 3, 2002, Kmart announced it was closing 284 stores in 40 states and Puerto Rico.

*Florsheim Group Inc.* - On March 4, 2002, Florsheim Group Inc. filed for Chapter 11 bankruptcy protection in the Northern District of Illinois. Shoemaker Florsheim listed assets of \$156.8 million and debts of \$159.7 million on its schedules. The wholesale business and assets may be sold to Milwaukee footwear firm Weyco Group, Inc. run by descendants of company founder Milton Florsheim. If the sale is approved, Weyco will buy 23 of the remaining 155 domestic stores, closing the rest, and

the wholesale business will move to Milwaukee. Florsheim has 1,100 employees worldwide, with 120 at its Chicago corporate headquarters.

### **Civil Enforcement Actions**

#### **Petition Preparers**

On October 2, 2001, the Bankruptcy Court fined petition preparer Johnny Carter \$100 per case for violating §110(g)(1) of the Bankruptcy Code, permanently enjoined him from acting as a petition preparer in the Northern District of Illinois, and cancelled the fee agreement between Carter and two debtors. Carter will not have to pay the fines as long as he does act as a petition preparer in the Northern District of Illinois. This action resulted from motions prepared by USTO trial attorney Richard Friedman in two Chapter 7 cases.

On February 5, 2002 Bankruptcy Judge John H. Squires of the Bankruptcy Court for the Northern District of Illinois remanded into the custody of the U.S. Marshal bankruptcy petition preparer Corey R. Henderson. Henderson failed to pay a \$500 fine imposed by the Court for illegally handling court fees in the case of Bobbie Kennedy, Case No. 01B34892, and was held in contempt by the court. The UST sought the imposition of the fine, and, after Henderson had not paid, further requested appointment by the court to prosecute civil contempt against Henderson. While Henderson was in the U.S. Marshal's custody, trial attorney Richard Friedman escorted him from Judge Squires' courtroom to the courtrooms of Bankruptcy Judges Schmetterer and Sonderby. In the case of Andrea Geddis Woodhouse, 01B39158, Judge Schmetterer held Henderson in contempt for failure to return excessive fees and for failure to appear at a prior court date, and fined him \$250 for not returning the excessive fees to the debtor within 30 days, as provided by §110 of the Bankruptcy Code. In the Charles Brooks case, 01B43120, Judge Sonderby imposed a \$250 fine on Henderson for illegally handling court fees and ordered him to repay \$300 in excessive fees to the debtor by March 5, 2002. On February 6, 2002, Henderson purged himself of contempt by paying the fines imposed by Judges Squires and Schmetterer and returning the excessive fees to debtor Woodhouse. Later that day the U.S. Marshal released Henderson. When Henderson did not comply with Judge Sonderby's order, Judge Sonderby appointed the UST to prosecute Henderson for contempt. After the Court held him in contempt, Henderson paid the fine and returned \$300 to the debtor.

In *In re Eric Poders*, the UST filed complaints seeking to enjoin the local *We The People* bankruptcy petition preparer franchisee and national *We The People* franchiser from engaging in numerous activities in violation of §110, most notably the unauthorized practice of law. The complaints are currently pending, with answers due by May 22, 2002.

#### **Identity Theft**

On February 19, 2002, a Chapter 7 case was dismissed in Chicago, on the trustee's motion, because the debtor failed to appear at the first meeting of creditors, and failed to file a complete set of schedules and statements of affairs. The *pro se* debtor listed a social security number on the petition belonging to another person, with the only debt listed as \$750 in parking tickets.

#### **§707(b)**

Recently, the Madison office successfully prosecuted a §707(b) case. The debtors included a husband who was a sales manager earning \$232,000 in 1999, \$188,000 in 2000, and \$148,000 in 2001, and an unemployed wife. The couple had two children, a home with mortgages of approximately \$478,000, a minivan with a secured claim of \$33,500 purchased one month prior to filing their chapter 7 case, and \$15,000 in credit card debt incurred 10 months prior to filing. After the UST filed a motion to dismiss, the debtors amended their schedules, claiming sizable charitable contributions with no evidence to support this claim. After preliminary evidence was presented, the debtors agreed to convert to a Chapter 13.

### **Indemnifications**

The UST filed and prosecuted an objection to broad indemnification provisions of an investment banker for the debtor in *In re KMart*. The Bankruptcy Court partially granted and partially overruled the objection and the UST will be filing an appeal soon. In another major Chapter 11 proceeding, *In re Comdisco*, the UST filed comprehensive objections to employment applications of investment bankers for the debtor and the unsecured creditors' committee on the issue of indemnification. The UST conducted discovery in these matters, deposing principals of Rothchild and Lazard Freres. The Bankruptcy Court overruled the objection and the UST prepared and filed Motions For Leave to Appeal and to Consolidate Appeals, all of which were granted. The UST will be filing his Appellant's Brief on the merits in the District Court in the next few weeks. Finally, in another major Chapter 11 proceeding, *In re National Steel Corporation*, the UST again objected to debtor's application to employ an investment banker, which was set for a May 9, 2002. hearing before the Bankruptcy Court.

#### Joint Fee Review Committee

Working with the debtor and statutory committees in the *Comdisco* case, the UST set up the protocol for establishing a joint fee review committee to review and comment on all professional fee applications filed in the *Comdisco* cases. As a committee member, the UST participates with business representatives of the debtor and creditors, to review and comment on pending fee applications, which total in excess of \$20 million for the first interim applications, resulting in substantial savings to the estate. The committee also reviews and comments on proposed budgets going forward for all professionals.

#### Professional Fees

In *In re Anicom, Inc.* the UST objection to the financial consultants's fee application for \$25,668.00 (based on consultant's failure to get employed under §327) was sustained. Chief Judge Susan Pierson Sonderby issued a written opinion (2002 WL 313375 (Bankr. N.D.Ill. Feb. 22, 2002) denying all fees and ordering return of a \$50,000 retainer.

#### Obj. to Discharge-Securities Fraud.

In *In re Terry Spirk*, the UST filed a complaint objecting to debtor's discharge based on debtor's failure to maintain books and records and explain a loss of assets in his personal case and in a related corporate case. Claims in the case arise from the debtor's sale of millions of dollars of promissory notes to hundreds of small investors. The debtor has filed an answer and produced more than 10 boxes of records in the early discovery stages.

#### Credit Card Bust-outs

The Chicago USTO initiated a procedure in the fall of 2001 to review all Chapter 7 petitions for various potential problems, the most significant being the credit card bustout. Appropriate cases are referred to the FBI and U.S. Attorney.

In one case an individual testified that his \$250,000 in credit card debt was due to gambling losses. The UST obtained monthly statements for 18 of his 36 credit cards for the one year prior to filing his bankruptcy case, and cash advance advices from casino locations for some 50 separate transactions in the 2 to 3 month period prior to filing. In preparation for his scheduled 2004 examination the USTO staff prepared a spreadsheet which contained every transaction from the credit card monthly statements as well as the casino cash withdrawals. The spreadsheet was prepared allowing for chronological sorting as well as sorting by individual credit card of all data. Upon review, it became apparent that the debtor had been involved in a classic bust-out scheme. For approximately half of his credit cards, in a seven day period he caused checks to be issued from his checking account purporting to pay the balances in full; after the credit card issuers had credited these payments but before the checks had been dishonored, the debtor charged additional cash advances and other purchases up to the card limits. Thus, when the payment checks finally bounced, the debtor had effectively doubled his credit limit on these cards. During his 2004 examination, the debtor maintained his position that these were gambling debts and his illness caused him to enter these fraudulent transactions. The UST has pending a complaint objecting to discharge, asserting grounds of false oaths, failure to maintain records, and failure to adequately explain loss of assets.

### Attorney discipline

In the Chapter 7 case of *In re Kaya*, the debtor's attorney, Alice Banis Shorts, filed a motion on behalf of the debtor that requested the Court vacate an order previously entered modifying the stay under §362 of the Code with respect to the Debtor's 1997 Ford van. Among the grounds for the motion was that the van was necessary for the debtor's reorganization and that the creditor was adequately protected in view of the equity in the vehicle. The Court denied the motion and noted that debtors do not reorganize under Chapter 7 of the Bankruptcy Code and that any equity in such vehicle would be for the estate's benefit, not the debtor's. The Court also suggested that the motion contained defenses to stay relief that were not warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law and that, accordingly, Shorts had signed a pleading in violation of Rule 9011. The UST recommended to the Court that it hold a hearing under §329 regarding the fees that Shorts had received and prepared for the Court an order and notice for attorney Shorts to show cause why she should not be sanctioned under Rule 9011. At the March 29, 2002 hearing, the Court ordered that Shorts return \$170 to the debtor and accepted the UST recommendation to sanction Shorts by requiring her to attend a continuing education program on representing consumer debtors. Shorts recently completed attendance at a Bankruptcy seminar sponsored by the ALI - ABA in Philadelphia.

**Amended Official Bankruptcy Form 1** *Effective December 1, 2001, Official Bankruptcy Form 1 has been amended, and its use is mandatory. If the debtor owns or had possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, the debtor must complete and attach Exhibit C to the Voluntary Petition. The Petition form has been amended to provide disclosure of whether Exhibit C has been attached.*

*For more information about this newsletter, or for additional copies, please contact: Alfreda Baran, Bankruptcy Analyst, USTO, 227 West Monroe, Suite 3350, Chicago, Illinois 60606, (312) 886-5785, or email: [alfreda.baran@usdoj.gov](mailto:alfreda.baran@usdoj.gov)*